

FILED
Clerk
District Court

APR 19 2007

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

JUNG SOON LEE (Deceased), by
SUNG YOUNG LEE, personal
representative,

Plaintiff

v.

DONG GUK CORPORATION,
et al.,

Defendants

Civil Action No. 05-0031

ORDER GRANTING
DEFENDANT DONGBU
INSURANCE'S MOTION
FOR SUMMARY JUDGMENT
AGAINST DEFENDANT DONG
GUK CORPORATION ON
ISSUE OF COVERAGE UNDER
THE INSURANCE POLICY

THIS MATTER came before the court on Thursday, April 19, 2007, for hearing of defendant Dongbu Insurance Company, Ltd.'s ("Dongbu's") motion for summary judgment (Docket No. 28) against defendant Dong Guk Corporation ("Dong Guk").¹ Defendant Dongbu Insurance Company, Ltd. appeared by and

¹

Other motions heard at the same time will be the subject of separate orders.

1 through its attorney, Thomas E. Clifford; defendant Dong Guk Corporation
2 appeared by and through its attorney, G. Anthony Long.
3

4 The court, having considered the written and oral arguments of counsel,
5 grants defendant Dongbu Insurance Company's motion for summary judgment.
6

7 Rule 56 of the Federal Rules of Civil Procedure states, in part, that judgment
8 "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories,
9 and admissions on file, together with the affidavits, if any, show that there is no
10 genuine issue as to any material fact and that the moving party is entitled to
11 judgment as a matter of law."
12

13 For purposes of this motion, defendant Dong Guk argues that---even
14 accepting the facts of the complaint as true---defendant Dongbu's motion for
15 summary judgment should be denied because the language of the contract of
16 insurance should be construed broadly enough to find that Dongbu might still be
17 liable for any damages imposed on Dong Guk.
18

19 Dong Guk Corporation operates a restaurant/bar at which liquor is served.
20
21 At the time in question, Dong Guk served liquor to decedent and her friends past
22 the 2:00 a.m. closing time mandated by Commonwealth of the Northern Mariana
23 Islands law.
24

25 In relevant part, the insurance contract provides that it does not apply to
26 bodily injury (the parties do not dispute that the phrase includes death) for which

1 Dong Guk may be held liable by reason of causing or contributing to the
2 intoxication of any person, by furnishing alcoholic beverages to a person under the
3 influence of alcohol, or by serving alcohol in violation of any statute, ordinance, or
4 regulation relating to the sale or use of alcoholic beverages. *See, Business Owners*
5 *Policy*, “Exclusions,” § B,1(c), p. 23, attached as Exhibit “A” to Dongbu’s Motion
6 for Summary Judgment (Mar. 20, 2007).
7

8
9 For purposes of this motion, Dong Guk does not contest that it violated all
10 three exclusion provisions in the statute. However, Dong Guk argues that Dongbu
11 is not only obligated to defend Dong Guk, but also that coverage exists under the
12 policy because the exclusions are limited to claims or damages for bodily injury and
13 does not extend to damages “*arising out of* bodily injuries.” Opposition to Dongbu’s
14 Motion for Summary Judgment at 6-7 (Apr. 6, 2007) (Docket No. 44). Since the
15 economic loss “arose out of” the death, the damages recoverable in a wrongful
16 death action by decedent’s heirs, if any, “arise out of bodily injury” and are covered
17 by the policy.
18
19
20

21 Because a decision as to the latter contention is dispositive, the court need
22 not consider Dongbu’s duty to defend. Summary judgment is appropriate where the
23 terms of a contract are not ambiguous, *see e.g.* 10B Federal Practice and Procedure
24 3rd § 2730.1 (2007), and where extrinsic evidence is not necessary to interpret it. *See*
25 *e.g. VISA Intern. Service Ass’n. v. Bankcard Holders of America*, 784 F.2d 1472 (9th
26

1 Cir. 1986). The uncontroverted facts show that Dong Guk's actions squarely fell
2 within the "alcohol" exclusions of the policy. The court will not engage in linguistic
3 contortions to avoid the plain language of the insurance policy. As the
4 Commonwealth Supreme Court put it in a slightly different context, the fact that
5 terms are not defined in an insurance policy does not make them ambiguous; such
6 terms are to be accorded their plain and obvious meaning. Ito v. Macro Energy, 4
7 N.M.I. Rptr. 46, 68 (1993). Here, Dong Guk's wholesale violation of the clear,
8 unambiguous exclusion provisions of the insurance policy relieve defendant
9 Dongbu Insurance of any duty to defend, because there can be no finding of liability
10 covered by the insurance policy.
11
12
13

14 FOR THE FOREGOING REASONS, defendant Dongbu Insurance
15 Company's motion for summary judgment is granted.
16

17 IT IS SO ORDERED.

18 DATED this 19th day of April, 2007.
19
20
21

22 
23 ALEX R. MUNSON
24 Judge
25
26